

REMARKS

Claims 18-34 are pending in this application. Claim 26 has been amended; support for that amendment may be found throughout the specification, particularly at pars. 0019-0020 of the published application (no. 2002/0178442).

Claims 18-20 and 23-25 stand rejected in the Office Action mailed August 29, 2005 under 35 U.S.C. § 102 as unpatentable over U.S. Patent App. No, 2002/0023130, to Stettner. These rejections are respectfully traversed, for the following reasons.

First, Stettner is not very analogous art, and consequently fails to teach or suggest many of the limitations of the pending claims. Stettner's system is directed to broadcast television and radio shows that seek audience participation. The "interactive shows" to which Stettner's method applies are unscripted (or loosely scripted) shows that are hosted.

In contrast, Applicant's claimed invention is directed, at least in one aspect, toward development of scripted shows that, generally speaking, are not hosted. See, e.g., claim 19.

Stettner's system is designed to allow a large number of audience participants of an interactive show to provide input to the show. The input that participants provide is in response to information contained in the show itself. The only electronic communication to participants mentioned in Stettner is an email alert that tells participants when input will be accepted. See, for example, par. 0032. An email alert is not a query, since it isn't asking for any information. In other words, Stettner fails to teach "sending an electronic query," as required by claim 18.

Further, since Stettner's system is directed toward receiving input from an audience of an show that is actually being broadcast, Stettner fails to teach "sending an electronic query to a member of a test audience."

For these reasons alone, the § 102(e) rejections of claims 18-20 and 23-25 are improper and should be withdrawn. Unless a single prior art reference teaches all of the limitations of a claim, a rejection under 35 U.S.C. § 102 is improper. Of course, since Stettner fails to teach the limitations of claim 18, Stettner cannot teach the limitations of claims 19-34, since all of those

claims depend from and therefore incorporate all of the limitations of claim 18. In particular, the § 102 rejections of claims 19-20 and 23-25 are clearly improper and should be withdrawn.

Also, since Stettner only mentions audience input regarding interactive shows, Stettner fails to teach “situational comedies, episodic shows, or soap operas,” a limitation of claim 19.

Since Stettner teaches only sending alerts to potential audience participants, Stettner fails to teach sending “streaming media, non-streaming online media, and television video data,” a limitation of claim 20.

Applicant respectfully notes that the Office Action fails to mention each limitation of claims 19-20 when rejecting those claims over Stettner. Indeed, none of the limitations of claim 20 are mentioned in the Office Action.

Claims 21-22, 26, and 28-33 stand rejected under 35 U.S.C. § 103 as unpatentable over Stettner. These rejections are respectfully traversed.

Claim 26 has been amended to more clearly emphasize that “incorporated into a show” means incorporated into the script of a show scheduled for broadcast within seven days” (i.e., that hasn’t yet been broadcast). This is in contrast to Stettner’s system, which only “incorporates” audience comments into a show already being broadcast by passing them on to a host of the show (see par. 0028)

Claims 21-22 are rejected based on the assertion that “Stettner teaches structuring the responses to the user’s input into said story [0017, 0032].” This assertion is incorrect for several reasons.

First, in Stettner, there is no story. As explained above, the shows of Stettner are hosted shows. Although they may be loosely scripted, such shows are not known in the art to have a story line. In any event, Stettner says nothing about a story.

Second, Stettner says nothing about a tier of questions. Since Stettner says nothing about posing any sort of queries, Stettner fails to teach multi-tiered queries.

To overcome the fact that Stettner says nothing about multi-tiered queries, the Patent Office attempts to take official notice “that it is old and well known to structure queries/questions

in a multi-tiered manner based on when a tier questions is to incorporated.’ Although Applicant finds this language to be somewhat obscure, taking of official notice in this context is clearly improper. As stated in the MPEP:

Official Notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known.

[A]ssertions of technical facts . . . or specific knowledge in the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art.

[A]n assessment of basic knowledge and common sense that is not based on any evidence in the record lacks substantial evidence support.

See MPEP § 2144.03(A).

Since the technical “facts” asserted are not supported by citation to a reference work recognized as standard in the pertinent art, the taking of official notice is improper, and should either be supported by a proper reference or withdrawn.

Applicant is not traversing the “fact” that is being officially noticed, although Applicant reserves the right to do so. Thus, the following requirement is inapplicable: “To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner’s action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art.”

In other words, Applicant is not “traversing” the “fact” officially noticed, but instead noting that the taking of official notice *itself* is improper and requesting the Patent Office to comply with its own rules.

If the Examiner is not relying on a reference, but instead is relying on personal knowledge of the “fact” officially noticed, then, pursuant to MPEP 2144.03(C) and 37 CFR 1.104(d)(2), the Examiner “must provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding.”

Indeed, the Office Action cites nothing in Stettner to support the rejections of claim 28-34, but merely takes official notice that all of the missing limitations are “old and well known.” But “it is never appropriate to rely solely on ‘common knowledge’ in the art without evidentiary support in the record as the principal evidence upon which a rejection was based.” See MPEP 2144.03(A), third paragraph. In this case, claims 28-34 were rejected solely based on a taking of Official Notice, contrary to what the MPEP allows.

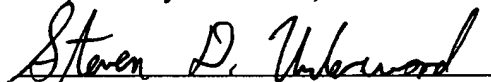
But even if the taking of official notice were proper, and even if the limitations missing from Stettner were found in some other prior art reference, there is no motivation to combine those limitations with Stettner, since Stettner makes no mention of initial episodes, educating an audience, etc. (and would have no reason to, given the nature of Stettner’s system).

The Patent Office is respectfully reminded that any publications used to support the above-discussed takings of official notice should be proper prior art – an Internet printout, for example, dated later than January 2, 2001 clearly would be improper.

No fee is believed due in connection with this Response (other than the one-month extension fee authorized above). Should any other fee be required, please charge such fee to Deposit Account No. 50-0310.

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Respectfully submitted,



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